

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Petitions of)	
)	
St. Lawrence Seaway Cellular)	
Partnership and)	DA 05-1952
)	
New York RSA 2 Cellular)	
Partnership)	
)	
For Designation as Eligible)	
Telecommunications Carriers)	
Under 47 U.S.C. § 214(e)(6))	
In the State of New York)	

To: Wireline Competition Bureau

**JOINT REPLY COMMENTS OF
ST. LAWRENCE SEAWAY CELLULAR PARTNERSHIP
AND NEW YORK RSA 2 CELLULAR PARTNERSHIP**

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August 3, 2005

Table Of Contents

I.	THE PETITIONERS AMPLY DEMONSTRATED THEIR QUALIFICATIONS AS ETCS AND THAT THEIR DESIGNATION IS IN THE PUBLIC INTEREST	2
A.	The Petitioners Clearly Meet the Requirements Regarding State Jurisdiction and Offering the Supported Services.	2
B.	The Petitioners Have Made Clear and Verifiable Commitments that Will Bring Tangible Benefits to Consumers in New York.	2
II.	NYSTA’S ARGUMENTS AGAINST REDEFINITION FIND NO BASIS IN THE ACT OR THE FCC’S RULES	7
III.	CONCLUSION	9

Summary

The petitions for eligible telecommunications carrier (“ETC”) designation filed by New York RSA 2 Cellular Partnership and St. Lawrence Seaway Cellular Partnership meet all applicable requirements for designation in both rural and non-rural areas under the 1996 Act and the FCC’s rules. None of the initial comments provide any credible argument for delaying or denying the Petitions.

As stated in the Petitions, the New York Department of Public Service has expressly stated that it lacks jurisdiction over CMRS carriers for ETC purposes, so that the FCC has jurisdiction over the Petitions. The Petitioners have also demonstrated their capability and commitment to offer and advertise the supported services as required under Section 214(e)(1) of the Act. The Petitioners have committed to respond to all reasonable requests for service, and to construct facilities that will serve a list of communities in rural, high-cost areas.

NYSTA, a commenter opposing the Petitions, misguidedly attempts to impose a “ubiquity” requirement that exists nowhere in the Act or the FCC’s Rules for any ETC. NYSTA also questions the Petitioners’ commitment to serve based on the “inherent difficulty” of building facilities in certain portions of the requested ETC service areas. The Petitioners acknowledge that the Adirondack Park Preserve is difficult to serve with new facilities due to the Preserve’s tight controls on new construction projects. While no carrier could meet NYSTA’s demand for a “guarantee” that service will be provided in all areas, the Petitioners believe that high-cost support will increase the chances of bringing service to some of those areas.

The public will benefit from the requested designations, and no party has demonstrated that any harm will result. As the FCC has repeatedly acknowledged, high-cost support can enable wireless carriers to finance the construction of network facilities in areas that are lacking in high-quality telecommunications service. Improved wireless coverage can bring significant benefits to law enforcement and public safety officials, as well as consumers who need to make calls when they have no access to a wireline telephone. Attempts by ILEC commenters to raise concerns about cream-skimming are completely without merit.

For all of the above reasons, New York RSA 2 and St. Lawrence Seaway request that the FCC grant their Petitions expeditiously so that consumers in New York’s high-cost areas may begin to experience the benefits of wireless competition without delay.

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St. Lawrence Seaway Cellular Partnership (“St. Lawrence Seaway”) and New York RSA 2 Cellular Partnership (“New York RSA 2”) (collectively, “Petitioners”), by counsel, hereby submit their Joint Reply Comments pursuant to the *Public Notice* issued by the Wireline Competition Bureau (“Bureau”) seeking comment on the Petitions by St. Lawrence Seaway and New York RSA 2 for designation as eligible telecommunications carriers (“ETCs”) in the state of New York (“Petitions”).¹ The National Tribal Telecommunications Association (“NTTA”) and the New York State Telecommunications Association (“NYSTA”) filed comments. As

¹ See *Public Notice, Parties are Invited to Comment on Petitions for Eligible Telecommunications Carrier Designation*, DA 05-1952 (rel. July 6, 2005)(“*Public Notice*”)

explained below, the Petitioners both satisfy the criteria for designation as ETCs throughout their requested service areas, and no commenter has provided any reason compelling delay or denial of either Petition.

I. THE PETITIONERS AMPLY DEMONSTRATED THEIR QUALIFICATIONS AS ETCS AND THAT THEIR DESIGNATION IS IN THE PUBLIC INTEREST

A. The Petitioners Clearly Meet the Requirements Regarding State Jurisdiction and Offering the Supported Services.

As set forth in the Petitions, the New York Department of Public Service (“NYDPS”) previously provided a statement that it did not have jurisdiction to consider a CMRS carrier’s petition for ETC status. *See* St. Lawrence Seaway Petition at pp. 4-5; New York RSA 2 Petition at pp. 4-5. Because the state commission has provided an “affirmative statement” that CMRS carriers such as the Petitioners are not subject to the state’s jurisdiction for ETC designation purposes, the FCC has jurisdiction to consider the Petitions under Section 214(e)(6) of the Act.²

The Petitioners also have clearly demonstrated their capability and commitment to offer and advertise the supported services listed in Section 54.101 of the FCC’s rules. *See* New York RSA 2 Petition and St. Lawrence Seaway Petition at Section V. No commenters have proffered any arguments or evidence to refute this showing. Accordingly, the Commission should find that U.S. Cellular satisfies the requirements of 47 U.S.C. Section 214(e)(1) and Section 54.101 of the FCC’s Rules.

B. The Petitioners Have Made Clear and Verifiable Commitments that Will Bring Tangible Benefits to Consumers in New York.

1. NYSTA Fails to Refute the Petitioners’ Showing of Consumer Benefit.

² New York RSA 2 acknowledges NTTA’s arguments concerning the St. Regis Mohawk Reservation, and will address the issue in an upcoming filing

As the Petitions made clear, a grant of ETC status to New York RSA 2 and St. Lawrence Seaway will increase the availability of new, competitively-priced services and technologies in rural areas of upstate New York. Both Petitioners are primarily focused on rural consumers and they are committed to deliver high-quality voice and data services over a modern network at competitive prices. In every area where the Petitioners expand their service with high-cost support, consumers will benefit from new choices and from the increased pressure placed upon incumbents to roll out services and price those services more aggressively. The Petitions also emphasized the public safety benefits of increased access to wireless service in remote and isolated areas.

In response, NYSTA points to New York's statewide wireline penetration rate and the availability of Voice Over Internet Protocol ("VOIP") telephony as proof that the Petitioners will not further competition or universal service. Leaving aside the question of whether the statewide penetration rate is at all probative of the "ubiquity" of wireline phone service in some of the state's most rural areas, NYSTA's argument misses the point. Increasing telephone subscribership may once have been the purpose of universal service, but that goal is largely accomplished. The current problem is that rural areas lag far behind urban areas in access to modern, attractively priced voice telephony and advanced telecommunications services using wireline or alternative technologies. For that reason, Congress in 1996 announced that universal service must ensure that rural consumers have access to comparable services at rates comparable to those in urban areas.³ Second, it is unclear whether VOIP is a viable substitute for wireline service, and the service naturally lacks the mobility of cellular and PCS.

³ 47 U.S.C. § 254(b)(3) ("Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates

Clearly, the aim of universal service is to enable rural consumers to benefit from quality alternatives to wireline service, and the Petitioners are committed to bring those benefits to consumers throughout their proposed ETC service areas.

2. Each Petitioner Commits to Provide Service Upon Reasonable Request.

New York RSA 2 and St. Lawrence Seaway have plainly stated their commitment to respond to all reasonable requests for service. New York RSA 2 Petition at pp. 13-14; St. Lawrence Seaway Petition at pp. 13-14. This commitment encompasses the six-step process for provisioning service that was approved by the FCC in its orders designating *Virginia Cellular* and *Highland Cellular* as ETCs, and subsequently codified in its recent *ETC Report and Order*.⁴ Identical or near-identical commitments have been approved by several state commissions as well.⁵ Accordingly, there can be no doubt that the Petitioners' commitment to respond to consumer requests satisfies all applicable requirements and evidences their serious intent to bring the benefits of high-quality wireless service to consumers in rural areas.

NYSTA claims this showing to be somehow deficient, insisting that the Petitioners must commit to providing "ubiquitous" service throughout their requested ETC service areas. Yet the FCC has consistently rejected such a suggestion, and indeed it rejected a similar argument by NYSTA in the *Nextel ETC Order*, stating:

We reject the arguments of certain commenters that Nextel does not offer service throughout the study areas where it seeks designation and therefore should not be

charged for similar services in urban areas.")

⁴ *Virginia Cellular, supra, Highland Cellular, supra; Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, FCC 05-46, *Report and Order* (rel. March 17, 2005) ("*ETC Report and Order*").

⁵ *See, e.g., U.S. Cellular Corp.*, Docket No. UM-1084 (Or. PUC, June 24, 2004); *Alaska DigiTel, L.L.C. Order Granting Eligible Telecommunications Carrier Status and Requiring Filings*, Docket U-02-39, Order No. 10 (August 28, 2003); *Smith Bagley, Inc.*, Case No. 03-00246-UT, Recommended Decision of the Hearing Examiner (N.M. Pub. Reg. Comm'n, June 14, 2004); *Easterbrooke Cellular Corp.*, Case No. 02-1118-T-PC (W.V. PSC, May 29, 2003) (effective June 22, 2003)

designated in these areas. Specifically, these commenters allege that service is not offered in many of the zip codes within the study areas where Nextel seeks ETC designation. The Commission has already determined that a telecommunications carrier's inability to demonstrate that it can provide ubiquitous service at the time of its request for designation as an ETC should not preclude its designation as an ETC.⁶

In an interesting twist, NYSTA points to the Petitioners' build-out commitments (discussed below) as "proof" that they do not provide ubiquitous coverage. *See* NYSTA Comments at p. 8 n.18.⁷ Yet the FCC has consistently upheld the submission of plans for build-out and other improvements as evidencing a carrier's commitment to provide service throughout its ETC service area. Even the five-year network improvement requirements in the *ETC Report and Order*, which are not yet required of ETC petitioners, will not require ETCs to fill in all portions of their network, or even to abide by "mandatory completion dates" for network improvements.⁸ Indeed, if ubiquity were required of all ETCs, NYSTA's members would fail such a requirement, since their service only extends as far as the end of a wire.

3. Each Petitioner Has Stated Its Firm Commitment to Build Out Facilities to Rural Communities.

Both New York RSA 2 and St. Lawrence Seaway have stated their commitment to use high-cost support to construct facilities in order to bring new and/or improved service to rural communities. Although incumbent and competitive ETCs may properly spend high-cost support on provision and maintenance of service and not only new construction and other improvements,⁹ each Petitioner has stated that it will supplement the record with a list of new

⁶ *Id.* at 16538-39 (footnotes omitted).

⁷ The (equally absurd) converse of NYSTA's argument would be that the failure of rural ILECs to use their high-cost support to provide any new or improved services to consumers is "proof" that their service needs no improvement.

⁸ *ETC Report and Order*, *supra*, 20 FCC Red at 6371, ____ (para. 24).

⁹ *See* 47 U.S.C. § 254(e).

facilities that it intends to construct with the use of high-cost funds. This commitment is consistent with the build-out proposals approved in *Virginia Cellular*, *Highland Cellular*, and in the order designating Nextel in New York and other states.¹⁰

NYSTA correctly observes that there are “inherent difficulties” in building out a network in many of the areas at issue, particularly in the Adirondack Park. *See* NYSTA Comments at pp. 6-8. The Adirondack Park encompasses approximately six million acres, nearly half of which is a constitutionally protected forest preserve. Mountaintop sites – which are necessary for providing usable signal in many of the relevant areas – often involve large parcel sizes controlled by one or two owners, producing difficult negotiations with reduced flexibility, higher transaction costs, higher rents, and unsatisfactory terms. Additionally, sites located on mountaintops are extremely difficult to reach, making construction often prohibitively expensive. On top of zoning and other local approvals, sites in the Adirondack Park must be approved by the Adirondack Park Agency, which has inordinately restrictive criteria and a burdensome approval process. The Petitioners understand these challenges and intend to work through them to the best of their ability to respond to reasonable requests for service in these areas. Petitioners’ acknowledge the challenges and understand that certain construction projects in the Park may be impossible due to the restrictive criteria for construction. The refusal of the Park Agency to consent to construction that would satisfy an otherwise reasonable request for service would be reflected in any report that Petitioners submit to the FCC on requests for service that could not be fulfilled. Surely the NYSTA does not expect a prospective carrier to resolve all potential issues that could arise, before it is even known whether or where requests for service will come from.

¹⁰ *NPCR, Inc. d/b/a Nextel Partners*, 19 FCC Rcd 16530, 16539 (2004) (“*Nextel ETC Order*”).

4. Each Petitioner Has Committed Itself to the Reporting and Other Compliance Items Required by the FCC.

The Petitioners have stated their commitment to the conditions outlined in *Virginia Cellular* and subsequent orders,¹¹ including a commitment to adhere to the CTIA Consumer Code for Wireless Service, file annual reports detailing consumer complaints, and report to the Commission on requests for service that could not be fulfilled. *See* New York RSA 2 Petition at p. 15; St. Lawrence Seaway Petition at p. 15. The Petitioners have also made an ample showing of how it will use support to respond to consumer requests for service and construct facilities to communities lacking in high-quality wireless service. As wireless providers, the Petitioners are accustomed to operating in a competitive marketplace and will have every incentive to use its support to win and retain customers in high-cost rural areas traditionally lacking in the kinds of choices available in urban areas.

II. NYSTA’S ARGUMENTS AGAINST REDEFINITION FIND NO BASIS IN THE ACT OR THE FCC’S RULES

Each of the Petitioners proposes an ETC service area that includes both rural and non-rural ILEC areas, and each proposed ETC service area includes the entirety of each affected ILEC except for Citizens Telecommunications of New York d/b/a Frontier (“Citizens”).¹² Each Petition set forth a detailed analysis describing how the redefinition of Citizens’ service area along wire-center boundaries fully satisfied the Joint Board’s criteria for redefinition. The Petitions also included wire center-specific data

¹¹ *See id.* at 1584-85.

¹² In its original Petition, New York RSA 2 stated that it covered only a portion of the study area of Champlain Telephone Company. However, as explained in a Supplement filed on July 19, the original statement was in error and the entire study area of Champlain Telephone Company is included within the proposed ETC service area.

demonstrating that the proposed ETC service areas do not cover primarily densely populated, low-cost portions of Citizens' study area.

Clearly, the requested redefinition satisfies all applicable criteria under the FCC's rules and precedent. Nonetheless, NYSTA opposes it. Specifically, NYSTA argues that, notwithstanding the primarily high-cost, low-density makeup of the portions of Citizens' study area within the proposed ETC service areas, cream-skimming will still be a problem because redefinition would result in "new low cost zones which would be available for cherry-picking by some other competitor."¹³ NYSTA Comments at p. 13. NYSTA's opposition to the requested definition is difficult to countenance. First, because Citizens has already disaggregated its support to the wire-center level, no competitive ETC would receive high levels of support for customers in low-cost zones. Second, any competitor seeking access to high-cost support in areas served by Citizens would first need to be designated as an ETC. In evaluating whether to designate the new competitor, the FCC would assess whether that competitor would have the ability to cream-skim. If cream-skimming is likely, that competitor would not likely receive designation. Quite simply, there is no basis for NYSTA's objection to the requested redefinition.

[continued on next page]

¹³ NYSTA's other argument against redefinition – that it would be onerous for Citizens to disaggregate its support – is no longer applicable in light of NYSTA's recent erratum clarifying that Citizens has already undertaken such disaggregation. *See* NYS Telecommunications Association, Erratum (filed Aug. 1, 2005)

III. CONCLUSION

For the reasons stated above, New York RSA 2 and St. Lawrence Seaway request that the Commission grant their respective Petitions.

Respectfully submitted,

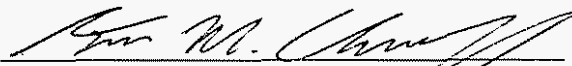
**ST. LAWRENCE SEAWAY RSA CELLULAR
PARTNERSHIP, A NEW YORK GENERAL
PARTNERSHIP**

**By: Township Cellular Telephone Company, Inc.,
general partner**

**NEW YORK RSA 2 CELLULAR PARTNERSHIP, A
NEW YORK GENERAL PARTNERSHIP**

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Champlain Cellular, Inc.
Newport Cellular, Inc.
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August 3, 2005

CERTIFICATE OF SERVICE

I, Steven M. Chernoff, an associate in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 3rd day of August, 2005, placed in the United States mail, first-class postage pre-paid, a copy of the foregoing *Reply Comments* filed today to the following:

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